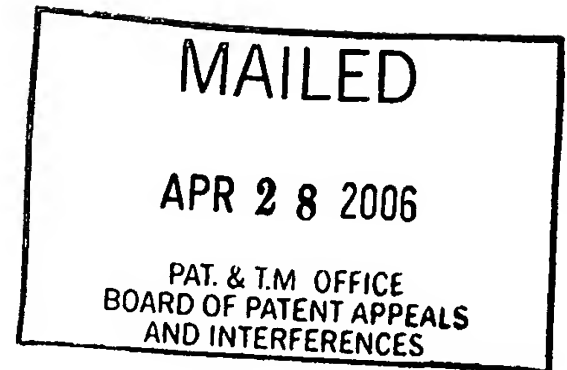


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte TONY LOOPER and DAVID FENG

Application 10/027,343



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on April 4, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing are identified below.

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A review of the application indicates that an Appeal Brief was filed on March 3, 2005, in which the requisite fee set forth in 37 CFR 1.17(f) of 500.00 was submitted. However, the Notice of Appeal has not been charged. The Brief also states that "[i]f additional fees are required, please charge them to Deposit Account No. 500256. The Notice of Appeal fee needs to be charged to the Deposit Account.

Also, a review of the file indicates that the Appeal Brief filed on March 3, 2005, was filed under the rules set forth in 37 CFR § 41.37(c). However, the Appeal Brief filed on March 3, 2005, does not fully comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) **Evidence appendix.** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) **Related proceedings appendix.** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed March 3, 2005:

- 1) "Evidence Appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related Proceedings Appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a substitute Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

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On June 9, 2005, the Examiner mailed an Examiner's Answer. The Examiner Answer mailed June 9, 2005 is found to be non-compliant with the new Rules set forth in 37 CFR § 41.37 effective September 13, 2004.

Also the Examiner's Answer was mailed on June 9, 2005, reveals that the appeal conference is improper. Section 1208 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., August 2001) states:

APPEAL CONFERENCE

An appeal conference is mandatory in all cases in which an acceptable brief (MPEP § 1206) has been filed. . . .

. . . .

. . . . If the examiner's answer does not contain the appropriate a indication that an appeal conference has been held (i.e., including the names of the conferees and identifying themselves as the conferees along with their initials), the Board should return the application directly to the appropriate Technology Center (TC) Director for corrective action. . . . This procedure applies to all examiner's answers received by the Board on or after November 1, 2000.

Proper correction of the Examiner's Answer is required.

Accordingly, it is ORDERED that the application is return to the Examiner:

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- 1) to charge the Notice of Appeal fee to appellants' Deposit Account Number 500256;
- 2) to hold the Appeal Brief filed on March 3, 2005, defective;
- 3) to notify appellants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 4) to vacate the Examiner's Answer mailed June 9, 2005, and issue a revised Examiner's Answer in accordance with the new rules effective September 13, 2004; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCE

A handwritten signature in black ink, appearing to read "Dale M. Shaw", with a long horizontal flourish extending to the right.

DALE M. SHAW
Program and Resource Administrator
(571)272-9797

DMS/pgc

cc: Kim Diliberti
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